NO. 82 - 1947

IN THE

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

ERICH KOKER and BEATRICE E. KOKER, husband and wife, APPELLANTS,

Versus

FREDERICK V. BETTS and JANE DOE BETTS, his wife, and their marital community, and SKEEL, McKELVY, HENKE, EVANSON & BETTS, Law Firm Of Frederick V. Betts,

APPELLEES,

And

KENNETH L. LeMASTER and JANE DOE LeMASTER, his wife, and their marital community, and SAFECO INSURANCE COMPANY OF AMERICA, AND GENERAL INSURANCE COMPANY OF AMERICA, and FIRST NATIONAL INSURANCE COMPANY OF AMERICA.

APPELLEES.

ON APPEAL FROM THE COURT OF APPEALS DIVISION I AND THE SUPREME COURT OF THE STATE OF WASHINGTON

APPELLANTS'-KOKERS REPLY BRIEF OPPOSING APPELLEES-BETTS MOTION TO DISMISS OR AFFIRM

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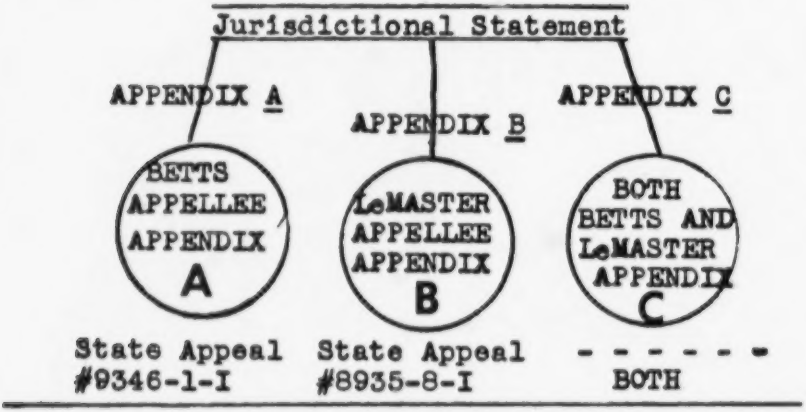
APPENDIX— JURISDICTIONAL STATEMENT

There is consolidation of two appeals and two summary judgments separate proceedings in Washington State Courts. This separated appendix a necessity on appeal to this court.



EACH APPENDIX HAS AN INDEX.

APPENDIX "A" is for the retyped documents pertaining to Appellee Betts.

APPENDIX "B" is for the retyped documents pertaining to Appellee LeMaster

APPENDIX "C" is for Appellee Betts as well as Appellee LeMaster, and has authority set forth for jurisdiction et al Constitutional-Statutory provisions.

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CONSTITUTION OF THE
UNITED STATES

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FREDERICK B. BETTS, ET UX, ET AL, APPELLEES,

AND

KENNETH L. LeMASTER, ET UX, ET AL, APPELLEES

ON APPEAL FROM THE COURT OF APPEALS DIVISION I AND THE SUPREME COURT OF THE STATE OF WASHINGTON

Pursuant to Rule 16.5, Appellants' Kokers respectfully submit this brief in opposition to Appellees' Betts motion to dismiss or affirm jurisdictional statement.

We are not litigious. This appeal stems from the only lawsuit we ever filed Pro Se.

Indigency has been refused by Appellants even though eligible. We borrow on our home.

Jurisdictional Requirements Met

Jurisdictional requirements are met under 28 USC §1257(3) and §1257(2) AND OTHER AS PER THE NOTICE OF APPEAL. APPENDIX A (After Index) No claim was ever made under §1257(1). USC 1257 set forth APPENDIX C-60 Through C-64(a):

Appellants Kokers ask jurisdiction or in the alternative probable jurisdiction or postponement of jurisdiction until after the review on the merits.

Under 28 USC §2103, appeals from State Court improvidently taken will be regarded as petition for writ of certiorari.

Determination of the United States Court Supreme has been asked by Appellants Kokers under 28 USC §2106 to reverse the case at bar to trial, or in the alternative settlement out of court. The 14th Amendment is invoked in answer to Appellees' Betts motion. Set Forth in APPENDIX C-78 Through 80. Jurisdictional Statement Page 28, and throughout state court records.

Granting of motion for summary judgment saying there is no material fact when there is, as was done in the case at bar, is manifest error of the court and denial of constitution right to trial. 24 FR SERV 893 56c.6:

Mr. Justice Holmes said:

> "Whether the right was denied or not given due recognition by the (state court) . . . is a question as to which the plaintiffs are entitled to invoke our judgment." LOVE V GRIFFITH 266 U.S. 32-33-34:

Beatrice Koker submitted objections to the entire Appellate Review in the State of Washington, filed January 26, 1983 upon the exhaustion of all remedies in the courts. Objections to Washington State Courts evading, avoiding, depriving of constitutional rights, and all other.

There is "State Action" in the case at bar under the Constitution Amendment 14 Note 20 p 59: 28 USCA §1257(3):

> "Judicial action in private disputes is a form of state action required

for application of this clause prohibiting state from abridging the privileges and immunities of citizens."

The ninth circuit Court of Appeals accepted a case for review on damages of a 3¢ stamp and costs, as a matter of principle and justice in HUGHS V GENGLER (9th Cir., 1968) 404 F 2d 229:

Judgment is "state action" within the meaning of the Fourteenth Amendment of the Constitution of the United States. In the authority of GALELLA V ONASSIS 353 F Supp 196, and 487 F 2d 986 (1973) it says:

"The claim that this constitutional right runs only against "state action" overlooks the fact that the act of a court - - even the entry of a judgment denying relief - - is state action within the meaning of the 14th Amendment."

"Conduct of an officer of state court (attorneys) constitutes "state action" within the meaning of the due process clause." 16A AM JUR §823 Constitutional Law Wests Key 253:

Questions Presented For Review

The questions presented for review by the Appellants Koker in this appeal, are within the confines of 28 USC §1257(2)(3) and the Constitution of the United States.

> Any federal question capable of repetition should be in the jurisdiction of the United States Supreme Court.

Denial of a right to a trial is a legal danger and jeopardy capable of repetition, and one of the most cautiously guarded rights of the United States Constitution. The 14th Amendment is invoked herewith in answer to the motion to dismiss or affirm by Appellee-Betts. Please See: Juridictional Statement Page 15-16: APPENDIX C-78 Through 80:

England is the original source of our legal format beginning. The right to a trial shows that origin. ISABELL FORESCUES CASE (1611) Lane, 91, 145 Eng Rep 324. A penalty was imposed upon her for recusancy (absence

from church). An inquisition issued and the case was tried by a jury.

FEDERAL QUESTIONS ARE PRESENTED

Appellee-Betts has made a motion to dismiss a jurisdictional statement on the ground no federal question is involved. Nothing about the appellants case could ever be fictitious or frivolous as alleged by such a motion. Amendment 14 of the Constitution is invoked herein and throughout the record and appeals and a motion to dismiss on the ground of no federal question must be denied as per 28 USCA §1257 Note 70 Page 192 "Fictitious or Frivolous Questions - Generally".

The federal questions are presented at every step of proceedings in state courts. The "WHERE AND HOW FEDERAL QUESTION RAISED" in the Jurisdictional Statement Page 45 Through 54. This pertains to the Complaint for both Appellee-Betts and LeMaster. APPENDIX A-61 Through A-78 is quotes from the record for

federal question for Appellee-Betts only, and where and how raised in clerk's papers, report of proceedings, (both in trial court) the appeal, civil appeal statement, opening and reply brief of appellant, and petition for review and petition for reconsideration rehearing State Supreme Court and Court of Appeals, and including references to "Class." (A similar record for Appellee-LeMaster from his records in state courts in APPENDIX-B)

The duty rests on the United States Supreme Court to decide for itself facts or constructions upon which federal constitutional issues rest. 28 USCA §1257 Note 13 Page 155: "Determination".

The Jurisdictional Statement has questions presented for review Pages 1 Through 6. The APPENDIX A B C are "working" documents in close proximity with the Jurisdictional Statement. There are many matters within the confines of 28 USC §1257 presented by the case at bar, some created by state appeal.

BURDEN OF PROOF NOT MEI

Appellee-Betts is the moving party for motion summary judgment and did-not meet the burden of proof, did-not make motion on three parts of complaint yet received a granted summary judgment without court jurisdiction. No ruling on appeal. Jurisdictional Statement P 23 and p 27: APPENDIX C-4 Through C-6:

The sparse check marks in the left hand margin of the index to clerk's papers, designate those papers filed by Appellee-Betts. APPENDIX A-37 Through A-40:

This case involves substantive and manifest rights of Appellant and the corresponding wrongs by appellees - both of them. A question of burden of proof may amount to a federal question when intimately involving substantive rights under a federal statute. 28 USCA §1257 Note 110 p 220: "Burden Of Proof."

No defense by the plaintiff was required where there is insufficient showing by the

STATE ACTION

Judicial action may be state action. USCA Amendment 14 §1 p 280 Note 15: 16 AM JUR 2d Constitutional Law §491: Landmark case is SHELLEY V KRAEMER 334 US 1, 14: 68 S Ct 836, 842, 92 L Ed 1161, 1181 (1948) which said:

> "That the action of state courts and judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment, is a proposition which has long been established by decisions of this court."

STATE BAR

There is controversial conflict as to the "private" status of an attorney's profession when actually the attorneys are in the business of "public" protection, and this constitutionally involves both State and Federal. Attorneys should be "under Color Law".

An attorneys business is public interest, tied to a state-created agency "State Bar" that can constitutionally levy membership

WHY?!

Why would the State Supreme Court deny the petition for review when Beatrice Koker submitted all four of the considerations for governing acceptance of review, when any one would suffice? There were conflict cases in rulings on summary judgment on point, and significant question of Constitutional law, and an issue of substantial public interest.

Why would a trial court grant summary judgment for one defendant without a motion? One summary judgment motion was not in affidavit form and by rule the motion was not properly to be weighed so far as its factual statements are concerned. Summary judgment was improperly granted to three parts of this case. WHY? "General denial" offered when an affidavit which merely denies the allegations contained in opposing party's pleadings is-not sufficient for summary judgment. Summary judgment granted. WHY? CR 56-Rule 56 says NO.

MEANINGLESS APPEALS

The State Courts have so departed from the accepted course of judicial and appeals and review, that it calls for supervision and justice from the highest court of the land. Be it noted from record, the appeals are meaningless and add further deprivations and denials of rights contrary to Constitutional Amendment 14 Note 1240 "Appellate Procedure."

Motions not ruled. Additional authority relevant to reversal or dismissal of cross-appeal "filed with no further action" after much controversy and being timely-properly filed.

An attorney affidavit to the Appellate Court holds discrepancies from the records of four counties. A member of this attorney's Law Firm, asked that my "show cause" for these discrepancies be unfiled - - it was done. Unfiling a false affidavit? Unfiled when it is relevant to the appeal and my deprivation?

CIVIL RIGHTS CASE

MILLER V WASHINGTON STATE BAR ASSOC.

679 F 2d 1313 (1982), an attorney brought a civil rights action claiming "admonition letter" adversely affected him, and no recourse. Federal District Court dismissed. 9th Circuit Court of Appeals reversed.

A SENSIBLE AWARD

Dissatisfaction with the 1976 jury award of $4,600. for a permanent drop foot injury and permanent cervical injury is voiced by the Court of Appeals Division I by comparison. The jury was so confused they took a criminal vote of "guilty or not guilty" in admitted liability, damages only. APPENDIX C-31(a):

"$145,000. is a sensible award for a drop foot injury," as per Court of Appeals Div I ruling in RYAN V WESTGARD 12 Wash App 500(1975) 530 P 2d 687:

In addition to injuries, I have suffered 3 obstructions of justice. CONST AMENDMENT 5 Note 12 p 346: "due process" "meaningful."

fees and compel membership to the State Bar as protection of people by "policing" the legal profession for public good.

The standards of membership in the State Bar and fees should be a matter of pride and integrity and kept voluntarily without exception. The State Auditor and State Bar control the funds, and further align the state and attorneys and the State Bar Agency.

Beatrice Koker in Jurisdictional Statement p 55 asking the Supreme Court of the United States to change the law of the land to include attorneys under color of law. APPENDIX C-82(b)-83-83(a): I am asking another landmark decision overruling prior law of the land, such as was decided June 6, 1978 by this court in MONROE V PAPE (1961) 365 US 167, 5 L Ed 2d 492, 81 S ct 473: DECISIONS OF UNITED STATES SUPREME COURT §3 p xxv (1977 Okl) 1978 Term:

STATE BAR ACT RCW 2.48

LEGAL MALPRACTICE

The Court of Appeals Division I reversed a denied summary judgment for legal malpractice and did so contrary to law without abuse of discretion by trial court judge. Their excuse was dissatisfaction with the Affidavit of lack of standard of care, and no material facts. Jurisdictional Statement p 31: and APPENDIX C-38 and C-39; APPENDIX A-19 Through A-34:

Appellee-Betts failed to properly present factual element of case and was in conspiracy and collusion suppressing and misrepresenting material facts of injuries, to a jury. The jury was so confused it took the jury foreman in the trial of 1976, nearly two hours to convince the jurors the victim of auto injuries was "not guilty." APPENDIX C-31(a): Determination of probable result in prior action giving rise to malpractice claim is a jury question. VOLUME 1 PROFESSIONAL LIABILITY

DIGEST 3-134 §3298: 2 PROFESSIONAL LIABILITY REPORTER 176: The rulings of the state courts in the case at bar are contrary to law et al.

"Bad faith" and "negligence" found against Appellee-Betts in another state case. This has every relevance to the case at bar and the contract with my attorney verbally. 83 Wn 2d 787 (1974) and 9 Wash App 180, 511 P2d 1020: HAMILTON V STATE FARM MUTUAL AUTO INS.

It was reading this case where I first learned my former attorney Betts was a staff attorney for an insurance company for 30 years then. The trial of 1976 with lies and deceit held two defense attorneys for insurance companies. There is authority on acting in bad faith to save insurance company money. CRISCE V SECURITY INS CO 426 F 2d 173 (1967): YOUNG V AMERICAN CAS CO 416 F 2d 906 (2nd Cir 1969): KAUDERN V ALLSTATE INS CO (NJ 1969): 277 FED SUPP 83: COPPAGE V FIREMAN'S FUND INS CO 379 F 2d 62, (6th Cir., 1967): Betts bad faith case supra from loyalty to insurance company.

REHEARING- RECONSIDERATION

Jurisdictional Statement p 59: APPENDIX C-80(a): The repeal of the state rehearing rule is repugnant to the Constitution of the United States, because there is denial of a right to complete "day in court." This appellant was further constitutionally shunned because of the rehearing not being denied "no you may not have a rehearing," or "yes you may have a rehearing." I was denied a rehearing without a yes or no on the motion.

In 28 USCA §1257 Note 401 p 315 "power of court" where the court has jurisdiction on the ground that the constitutionality of a state law is involved, it may dispose of all questions in the case. SCOTT V DONALD (SC 1897) 17 S Ct 265, 165 US 58, 41 L Ed 632:

The Federal Constitution has secured my rights. The question with the rehearing law is the effect and operation as put in force in the state. To further deny and deprive rights, a reconsideration-rehearing motion timely should

not ever be affected adversly by a premature mandate, when the powers of a court are so warranted to see that justice is done. 28 USCA §1257 Note 185 p 235 "Construction of State Statute."

It is apparent to repeal a rehearing rule is to save court time, but in that time-saving process who is to save Constitutional Rights to the day in court?

CONCLUSION

Appellants-Kokers ask this court not to dismiss nor refuse the Jurisdictional Statement, but to accept the Jurisdictional Statement and jurisdiction or in the alternative (as per the appeal) jurisdiction, probable jurisdiction or postponement of jurisdiction until review on the merits.

WHAT IS IN THE CASE AT BAR THAT APPELLEES-BETTS WISH QUASHED BEFORE A REVIEW ON THE MERITS AND THE SUPREME COURT HEREIN FINDS OUT?

moving parties. The complaint was not answered. There were no objections and no motions from either defendants Betts nor LeMaster in trial court after the initial summary judgment motion.

The extensive record of Beatrice Koker opposing summary judgment in trial court even though the moving parties did-not meet their burden of proof, was to estopp them voluntarily, from evading, avoiding, and escaping. To no avail. 6 J. MOORE, FEDERAL PRACTICE §56.22(2) p 824-825 2nd Ed 1966:

The Appellees-Betts motion to dismiss or affirm the jurisdictional statement or refuse jurisdiction, is inadequate in that it is their opinion, not fact.

The crux of the court overload ties directly to attorneys not doing their duty in the trial court level. This opinion becomes fact from my own knowledge and experience of the past 12 years.

It is important for this court to know Appellees-Betts thought it "might be advisable to settle the whole thing." The scene was the trial courtroom for signing of the order. QUOTING FROM: RP "ORDER" SEPT 3, 1980. Present In Court: Honorable Judge Goodloe, Mr. Mines (Attorney Of Record For Mr. Betts Then) and Beatrice Koker. Pages 5/23-25: Page 6/1-6: Page 6/8-10:

> THE COURT: "I think those settlement conferences at the appellate level are a great thing." "Maybe you can settle the whole thing."
>
> MR. MINES: "It might be advisable."
>
> MRS. KOKER: "I would like to get it settled, too, but it has to be fair."
>
> THE COURT: "Yes, and I know it will be."

ONLY FOR THE TRIER OF FACT: The case at bar is permeated with questions of motive and intent only for trier of fact, and not for summary judgment. The appellees (both) strive to evade, avoid, escape - - Appellee-Betts even now on this motion.

Appellants-Koker submit this reply brief in good faith. Appellees-Betts has no valid reasons to dismiss the jurisdictional statement nor refuse jurisdiction. No reasons, no authority, no argument from Appellees.

For this reason and all foregoing reasons in this reply brief in opposition, and for all reasons submitted in Appellants' jurisdictional statement and the APPENDIX ABC we respectfully request the motion of Betts be denied and that jurisdiction or probable jurisdiction or postponement of the jurisdiction until review on the merits be granted Appellants-Kokers. That dismissal of the jurisdictional statement be denied.

Signature Of
Beatrice Koker Only
For Notary:

Respectfully submitted,

Beatrice E. Koker

Beatrice E. Koker, Pro Se

Erich Koker

Erich Koker

SUBSCRIBED AND SWORN TO BEFORE ME THIS 11th

DAY OF July 1983.

James G. McArdle

Notary Public in and for the State of Wash.

Seattle

Residing at

CERTIFICATE OF SERVICE

I, Beatrice E. Koker, Petitioner-Appellant, hereby do certify that I made personal service of 3 copies (three) each of the reply brief in opposition to appellees-Betts motion to dismiss or affirm on July 12, 1983. And sent 40 copies certified express mail to the United States Supreme Court on July 11, 1983.

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